

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

DISABILITY RIGHTS OHIO,

*Plaintiff,*

v.

THE BUCKEYE RANCH, INC.,

*Defendant.*

No. 2:18-CV-894

No. 2:18-CV-904

Chief Judge Sargus

Magistrate Judge Vascura

**UNITED STATES' REQUEST FOR ADDITIONAL TIME TO CONSIDER WHETHER  
TO INTERVENE OR OTHERWISE PARTICIPATE**

On March 15, 2019, the United States of America filed a Notice of Potential Participation and Request for Additional Time, informing the Court and parties that it was considering whether to seek to intervene or otherwise participate in these actions in order to defend the constitutionality of certain federal statutes.<sup>1</sup> On May 14, 2019, the United States filed a second request for additional time due to developments in the cases that suggested that there may be no need for the United States to participate. By Notation Order of May 16, 2019, the Court indicated that the United States must notify the Court by July 15, 2019, whether it intends to intervene or otherwise participate.

The United States understands that the parties are currently participating in a mediation process in an attempt to resolve these cases without further litigation. However, at this stage,

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<sup>1</sup> The statutes at issue are the Protection and Advocacy for Individuals with Mental Illness Act ("PAIMI"), 42 U.S.C. §§ 10801 *et seq.*, the Protection and Advocacy for Individuals with Developmental Disabilities statutes ("PADD"), 42 U.S.C. §§ 15041 *et seq.*, and the Protection and Advocacy of Individual Rights statute ("PAIR"), 29 U.S.C. § 794e (collectively, the "Statutes").

there remains some uncertainty regarding whether The Buckeye Ranch will seek to reassert its constitutional challenges. The United States therefore respectfully requests additional time, until September 16, 2019, in order to monitor subsequent developments and consider whether to intervene or otherwise participate in this action. If the United States decides not to intervene or participate before September 16, 2019, it will notify the Court promptly.

Rule 5.1 provides that, “[b]efore the time to intervene expires, the court may reject the constitutional challenge, but may not enter a final judgment holding the statute unconstitutional.” Fed. R. Civ. P. 5.1(c). Pursuant to this provision, the United States respectfully requests that the Court not declare any of the Statutes unconstitutional before the United States decides whether or not to intervene in this case. The United States does not object to the Court’s deciding any preliminary issues or deciding to uphold the constitutionality of the statutes before September 16, 2019. *See* Advisory Committee Notes (2006), Fed. R. Civ. P. 5.1(c) (“Pretrial activities may continue without interruption during the intervention period.”).

Counsel for the United States has communicated with counsel for plaintiff and defendant regarding this motion, and neither of the parties oppose the request for additional time.

Dated: July 15, 2019

Respectfully submitted,

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MICHELLE BENNETT  
Assistant Director, Federal Programs Branch

/s/ Kathryn L. Wyer  
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**CERTIFICATE OF SERVICE**

I hereby certify that on July 15, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will also send such notification to the parties' counsel of record.

\_\_\_\_\_/s/ Kathryn L. Wyer\_\_\_\_\_  
Kathryn L. Wyer